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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,085	02/20/2004	Kenneth David Harris JR.	033964-1060	6251

54945 7590 04/18/2007  
NIXON PEABODY LLP  
401 9TH STREET, N.W.  
SUITE 900  
WASHINGTON, DC 20004

EXAMINER
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MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/783,085

Applicant(s)

HARRIS ET AL.

Examiner

Tara L. Mayo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-17 and 20-31 is/are rejected.
- 7) ☒ Claim(s) 3,4,18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1, 2, 5 through 10, 14 through 17, 20 through 25 and 29 through 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herpel (U.S. Patent No. 3,542,427) in view of Tomlinson (U.S. Patent No. 5,895,365 A).

Herpel '427, as best seen in Figures 1 and 3, shows a cushion for supporting a person in a sitting position, comprising:

with regard to claims 1, 16 and 31,

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a backrest (14 and 16, in combination) with two elongate side edges;  
two elongate armrests (26 and 28, in combination), each with a longitudinal axis, rotatably coupled to the backrest wherein the two armrests can rotate, while remaining coupled to the backrest, from a sitting position to a folded position, and wherein, in the folded position, the longitudinal axes of the armrests extend along the two side edges of the backrest;  
with regard to claims 2 and 17,

wherein the two elongate armrests are perpendicular to the backrest in the sitting position;

with regard to claims 5 and 20,

further comprising one or more latches that prevent the two elongate armrests from rotating about the backrest beyond the sitting position;

with regard to claims 6 and 21,

wherein the backrest and two armrests form nearly a rectangular top profile in the folded position; and

with regard to claims 15 and 30,

the two armrests being coupled to the backrest by an axle (56) that runs through a bottom portion of the backrest.

Herpel '427 teaches all of the features of the claimed invention with the exception(s) of:  
with regard to claims 1, 16 and 31,

one or more massaging units within the backrest;  
with regard to claims 7 and 22,

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the one or more massaging units being massaging motors;  
with regard to claims 8 and 23,  
the one or more massaging units being pulsating transducers;  
with regard to claims 9 and 24,  
a control panel coupled by electrical communication to the massaging unit(s); and  
with regard to claims 10 and 25,  
the control panel being located in one of the armrests.

Tomlinson '365, as seen in Figures 1 and 3, shows a massaging bed cushion comprising a backrest (12) and right and left armrests (24, 28) detachably and rotatably coupled (via axle 38 and member 40; col. 4, lines 34 through 40) to the backrest for ease of positioning oneself, and further comprising one or more massaging units (20) within the backrest in the form of pulsating transducers (col. 4, lines 14 through 15), the massaging units being in electrical communication with a control panel (32) located in one of the armrests, and further comprising a power supply in electrical communication with the control panel (col. 4, lines 15 through 17 and 28 through 30). The device of Tomlinson '365 further comprises a cushion covered by fabric (col. 4, lines 11 through 13).

With regard to claims 1, 7 through 10, 16, 22 through 24 and 31, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the device shown by Herpel '427 such that the backrest would include the massaging unit system disclosed by Tomlinson '365. The motivation would have been to

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enhance the comfort of a user by including means for imparting controlled vibratory action to the backrest.

With specific regard to claims 14 and 29, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device shown by Herpel '427 such that the frame (14) and cushion (16) of the backrest would further include a fabric cover as taught by Tomlinson '365. The motivation would have been to provide the backrest with a desired aesthetic appeal.

4. Claims 11 through 13 and 26 through 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herpel (U.S. Patent No. 3,542,427) in view of Tomlinson (U.S. Patent No. 5,895,365 A) as applied to claims 1 and 16 above, and further in view of Sleichter, III et al. (U.S. Patent No. 6,682,494 B1).

Herpel '427 fail to teach:

with regard to claims 11 and 26,

a control panel and one or more heating sources in the backrest and electrically coupled to and controlled by the control panel;

with regard to claims 12 and 27,

a power supply coupled by electrical communication to a control panel; and

with regard to claims 13 and 28,

the power supply being a battery.

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Sleichter, III et al. '494, as seen in Figure 1, shows a seat (15) including a seat cushion (14A) and a separate backrest (14B), the backrest comprising multiple massaging units (12) in the form of pulsating transducers (Claim 31) or motors (Claim 1), and further including a control panel (36), one or more heating sources (16), and a power supply in the form of a battery (col. 8, lines 11 through 15).

With regard to claims 11 through 13 and 26 through 28, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the backrest taught by the combination of Herpel '427 and Tomlinson '365 such that it further include the battery powered heating system disclosed by Sleichter, III et al. '494. The motivation would have been to include means for effecting a warming sensation.

***Allowable Subject Matter***

5. Claims 3, 4, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



12 April 2007



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**